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In re Application of
ITO et al.

Application No. 10/780,893

Filed: 19 February 2004

Attorney Docket No. 24-012-TB

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:
: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
:

This is a decision on Petitioner's request to confirm acceptance of earlier claim for domestic priority under 35 U.S.C. 120 and 365(c) and in the alternative, the petition under 37 CFR 1.78(a)(3), filed 10 September 2007, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/JP02/08378 filed on 20 August 2002.

The application file has been reviewed, and it is concluded that applicant failed to timely make a proper benefit claim to PCT Application No. PCT/JP02/08378 in accordance with 37 CFR 1.78(a).¹ Thus, the filing of a petition under 37 CFR 1.78(a)(3) is necessary. Such petition is hereby **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR

¹ While Form PTO/SB/05 included with the initial application submission identifies the present application as a continuation of the PCT application, such reference does not comply with 37 CFR 1.78 because the reference does not: 1) appear in the first sentence of the specification or in an application data sheet (1.78(a)(2)(iii)), and 2) include the international filing date (1.78(a)(2)(ii)). The domestic benefit claim to the international application was not included on the initial filing receipt.

1.78(a)(3) in that (1) a reference to the prior-filed international application has been included in an application data sheet, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this instant application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met.

Any inquiries concerning this decision may be directed to Cynthia M. Kratz at (571) 272-3286. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forward to Technology Center 2800 for processing, as deemed appropriate, of the Application Data Sheet filed with the instant petition on 10 September 2007.



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